

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT County Counsel	(2) MEETING DATE 8/20/2013	(3) CONTACT/PHONE Rita L. Neal 781-5400	
(4) SUBJECT Presentation and report on the California Public Records Act.			
(5) RECOMMENDED ACTION It is recommended that the Board of Supervisors receive and file this report on the California Public Records Act.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT { } Consent    { } Presentation    { } Hearing (Time Est. ____ )    { <b>X</b> } Board Business (Time Est. 60 minutes)			
(11) EXECUTED DOCUMENTS { } Resolutions    { } Contracts    { } Ordinances    { <b>X</b> } N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A { } 4/5th's Vote Required    { <b>X</b> } N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY { <b>X</b> } N/A    Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW  Emily Jackson			
(18) SUPERVISOR DISTRICT(S) All Districts -			

# County of San Luis Obispo



TO: Board of Supervisors

FROM: County Counsel / Rita L. Neal  
781-5400

DATE: 8/20/2013

SUBJECT: Presentation and Report on the California Public Records Act.

## **RECOMMENDATION**

It is recommended that the Board of Supervisors receive and file this report on the California Public Records Act.

## **DISCUSSION**

### **A. Background:**

The California Public Records Act (Government Code, Section 6250 et seq.) ("the Act") gives members of the public the right to inspect and obtain copies of most of the records created, used, or maintained by public entities. The Act is interpreted to strongly favor disclosure of public records. The fundamental idea of the Act is that governmental records must be disclosed to the public, upon request, unless there is a legal basis not to disclose the records. Thus, the concept of the Act is fairly simple to articulate and understand. However, carrying out the purpose of the Act amid the numerous exemptions can be a journey through a complicated legal analysis.

In complying with the Act, a public entity must balance the right of public access against the privacy right of individuals and the need for governmental efficiency and effectiveness. The right of access to government documents is not unfettered and there are many exemptions within the Act that allow the public entity to withhold certain documents.

### **B. General Provisions of The Public Records Act:**

1. **Definition of a Public Record:** The Act broadly defines a "public record" as "any writing containing information relating to the conduct of the public's business prepared, owned used, or retained by any state or local agency regardless of physical form or characteristic." Additionally, most electronic records are considered public records and a public entity typically must disclose electronic records in the format in which it holds the information. Over the years, Courts have interpreted the definition to further clarify what is a public record. As such, one court held that a public record is one that is "necessary or convenient to the discharge of an official duty." Another court found that merely because the writing is in the possession of the local agency, it is not automatically a public record. It must relate to the conduct of the public's business.

2. **Making A Request For A Public Record:** Public record requests may be made orally or in writing and a written request may be made in paper or electronic format. An agency may request and recommend that a person making a request put it in writing in order to facilitate a complete response. Any and all requests must reasonably describe an identifiable record and be focused, specific and clear enough so that staff can determine what record/document is being sought by the requester. Under the provisions of the Act, when a request is not clear or is overly broad, the public entity has a duty to assist the requester in reformulating the request to make it clearer and/or less broad.

3. Responding To Requests For Public Records: Responses to requests are generally required within 10 days of the request, although the agency may take up to an additional 14 days to respond. The additional days may be necessary to allow staff to search records or consult other departments, to allow for a determination of the volume of the response or to compile data or write a computer program to extract the data. It should be noted that a response is due within the statutory deadlines, but not necessarily the documents. Often, the request may seek voluminous records from numerous locations and/or may require substantial time to review and redact. Thus, the response simply requires that the agency notify the requester if there are responsive documents, whether the agency can comply with the request, and an approximate timeline of when they will be available.

4. Fees For Public Records: Fees may not be charged to reimburse the County's costs incurred to search for a record, review a record, redact a record, assist a requester in formulating a request, or respond to a request. Fees may be charged for direct costs of duplicating a record. In this County, the fee schedule allows for a charge of \$.10 per copy. If the records are kept electronically, they may be provided in the electronic format, if it is feasible to do and the requester asks that they be produced that way. If producing the records electronically will require data compilation, extraction or programming, the requester is required to bear the cost, including the cost of programming and other necessary computer services. Responding to public records requests can be a very time consuming activity for which the County does not get reimbursed.

5. Exemptions From Disclosure: The Act contains many exemptions which provide a legal basis for the public entity to decline to disclose all or parts of certain public records. For example, medical and personnel information found in government records are generally exempt. Additionally, there are a number of exemptions that are based on the governments need to perform its business in an efficient and effective manner. For example, records of pending litigation, preliminary drafts and investigative records are subject to exemption. There are many specific exemptions within the Act and there is also an exemption which permits an agency to withhold records where "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Each request for documents requires a thorough review of the documents to determine if any exemptions apply.

#### C. Assuring Compliance With The Public Records Act:

The County of San Luis Obispo, as with all counties and cities in the state, is subject to the provisions of the Act and staff makes every effort stay up to date and comply with its requirements. In keeping with the intent of the Act, County staff recognizes that transparency is extremely important, but that balancing the need to protect private information and function efficiently is also important. As such, significant time is spent to assure that we fully comply with the Act and produce records that the public is entitled to review.

It is difficult to track the actual number of requests received by the County each year as some departments have rather sophisticated systems for tracking requests and others do not. Based on our best estimate, the County receives approximately 1,350 to 1,500 *written* requests each year. Most departments don't track verbal requests although departments report that numerous verbal requests are made each year and if they are simple to comply with, documents are produced without asking the requester to put something in writing.

Some departments receive more requests than others and the requests vary by department. For example, the Sheriff's Department receives numerous requests for crime/incident reports, the Planning Department tends to receive requests about development projects and the General Services Agency tends to receive requests related to Requests for Proposals or bids on public projects. In the last two to three years, many departments report that there has been an increase in the number of requests received.

Responding to requests can be very time consuming. Most departments don't track the time it takes staff to respond. However, staff is very diligent in following up with requesters to assist them in clarifying their requests and to help them identify the documents or type of documents they may be looking for. Most requesters appreciate this assistance and many times, after speaking to the requester, staff can more precisely determine what documents are being sought and provide them in an expedited manner. Unfortunately, there are also requesters who refuse to narrow their requests and such refusal can create delay and confusion with regard to what records are being sought.

When a request asks for documents that may be located in several departments and/or on several computers, it can require numerous staff to search records, files and computers to determine if there are responsive documents. Once the documents are identified, they must be reviewed to determine if any exemptions apply and if any redactions need to be

made. This process can consume hours of staff time. Some departments have staff, as part of their duties, dedicated to coordinating responses.

As a result of increased requests and more time being spent by County staff in responding to requests, the Administrative Office has created a charge code which will allow all employees who work on requests to track their time. As a result, the County will be able to determine the cost of responding to all requests on a yearly basis.

The goal in responding to public record requests is to be transparent, communicative with the requester and provide the documents subject to disclosure. Overall, every effort is made to coordinate a response which complies with the Act.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

Many departments provided information on the number and types of public record act requests they receive each year.

#### **FINANCIAL CONSIDERATIONS**

With the implementation of a charge code, it will now be possible to track the time and cost that it takes County staff to respond to public record act requests.

#### **RESULTS**

Complying with the Public Records Act promotes government transparency and is consistent with the County's organizational values of accountability and responsiveness.